IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.436 OF 1982

The State of Maharashtra
(The Collector of Pune) ... Appellant

V/s.

1. Gopinath Pandurang Nagarkar
2. Madhav Pandurang Nagarkar
3. Rakhamabai P. Nagarkar
since deceased, by heirs:
3-a) Gopinath P. Nagarkar
3-b) Mahadeo P. Nagarkar
3-c) Sudhir Shrivallabh Puranik
3-d) Subhash S. Puranik
3-e) Surendra S. Puranik
3-f) Sunanda Ramesh Shende
3-g) Tarabai @ Bharati Chintaman Rajwade;
3-h) Kusum @ Sudha Manohar Vaidya ... Respondents

Mrs.G.P. Mulekar, AGP, for Appellant
Mrs.Deepa Ahuja i/b V.B. Naik for Respondent Nos.1 to 3
Mr.C.R. Dalvi for Respondent Nos.3A, 3B, 3H and 3G

CORAM: **SMT.NISHITA MHATRE, J.**

JUDGEMENT RESERVED ON: **OCTOBER 7, 2004**
JUDGMENT DELIVERED ON: **NOVEMBER 5, 2004**

JUDGMENT:

. This Appeal is preferred by the State against the judgment and order of the learned Arbitrator fixing the compensation at the rate ranging between Rs.5000/- per acre to Rs.7000/- per acre in respect of the lands acquired from the respondents.

2. It appears large tracts of land from the village

Pashan, Taluka: Haveli, District: Pune were requisitioned by an order dated October 23, 1961 under the Requisition and Acquisition of Immovable Property Act, 1952. These lands were subsequently acquired under the notification issued on October 21, 1964 under section 7(1) of the Act. The acquired lands were divided into three blocks by the Collector depending on their proximity to the Gaothan and other facilities. This grouping was accepted by both the State and the landholders. The collector thereafter decided the rates for each block. The claimants i.e., the Respondents herein filed their claims. Since there was no agreement between the Collector and the landholders, the learned Joint Judge, Pune was appointed as Arbitrator to determine the amount of compensation payable under section 8 of the Act. The suit lands admittedly formed part of Block No.1. The compensation was fixed by the learned Arbitrator between Rs.5000/- to Rs.6000/- per acre. Being aggrieved by this order, the State has preferred the present appeal.

3. The present appeal was to be heard alongwith First Appeal No.1011 of 1980. It appears, however, that when First Appeal No.1011 of 1980 was heard, the present appeal did not appear on Board and, therefore, remained to be decided. The judgment dated 28.9.1993 of the Division Bench of this Court decided the fate of not

only First Appeal No.1011 of 1980 but other appeals preferred both by the State and the landholders in respect of the tracts of land in Village Pashan. The Division Bench of this Court dismissed the appeals filed by the State and enhanced the compensation payable to the claimants depending on the blocks in which the lands were situated.

4. Admittedly, the present lands are situated in block No.I. The Division Bench has held that the owners of lands falling within block No.1 would be entitled to compensation @ Rs.600/- per guntha which is about Rs.24,000/- per acre, much more than the award of the Arbitrator under section 8 of the Act.

5. According to the learned Assistant Government Pleader, appearing for the appellant, this Court cannot grant something higher than what has been claimed by the claimants before the Arbitrator. According to her, the claimants had claimed much lower amount than what was decided by the Division Bench of this Court. The Joint Judge, Pune awarded the claimants a sum of Rs.161550/- with interest @ 4% per annum from the date of dispossession till payment. She submits that at best, this Court can grant the rates claimed by the claimants. According to her, in the absence of any cross appeal, being preferred by the claimants, this Court has no

jurisdiction to grant compensation higher than what was already granted to the claimants. According to the learned Advocate, the appellant cannot be put into a position worse than it would have been had no appeal been preferred by it.

6. The Division Bench of this Court while deciding the First Appeal No.1011 of 1980 and other connected appeals, has taken into consideration the proximity of the lands with the Gaothan area and found that Rs.600/- per guntha, i.e., Rs.24,000/- per acre, was the proper compensation payable to the claimants.

7. The submission made by the learned Assistant Government Pleader in the present appeal was similar to the submission made before the Division Bench that no enhancement of compensation could be granted in case the claimants did not prefer an appeal or cross objection. The Division Bench has considered these submissions of the learned Assistant Government Pleader and has held by relying on the judgments of the Supreme Court in *Bihar Supply Syndicate v/s. Asiatic Navigation and Others,* **(1993) 2 SCC 639**; *Mahant Dhangir v/s. Shri Madan Mohan*, **(1987 Supp. SCC 528)**; *Giani Ram v/s. Ramji Lal,* **AIR 1969 SC 944;** and *Choudhary Sahu v/s. State of Bihar,* **AIR 1982 SC 98** that the sweep of the power under Rule 33 of Order 41 of the Code of Civil Procedure is

wide enough to enable the appellate Court to pass any order, decree to meet the ends of justice. The Court has observed thus:

> 10. We find considerable substance in the contentions of the learned counsel for the claimants. The sweep of the power under Rule 3 is wide enough to determine any question not only between the appellant and the respondent, but also between the respondent and and the co-respondent. The words 'as the case may require' used in Rule 33 of Order 41 have been put in wide terms to enable the appellate Court to pass any order or decree to meet the ends of justice. The only constraint, may be these: That the parties before the lower court should be there before the Appellate Court. The question raised must properly arise out of the judgment of the lower Court. All the parties before the lower Court are parties before us. The question of enhancement of the market price also arises out of the judgment of the lower Court. It will be unjust and unfair to deny the relief to some claimants on the basis of such a technical plea. In our opinion, all the claimants should be allowed the benefit of the enhanced rate of compensation subject to the condition of payment of Court Fees as per the provisions of the Bombay Court Fees Act. ...

8. Mrs.Mulekar relies on the judgment of the Supreme Court in the case of *Land Acquisition Officer cum DSWO, A.P. v/s. B.V. Reddy & Sons,* **(2002) 3 SCC 463** to submit that no enhancement of the rates be given.

9. The present appeal arises out of a single reference and therefore, it would be just and proper to extend the benefits as the Division Bench has done. The Division Bench has already observed that all the appeals before it arise out of the single reference. The

present appeal also arises out of the same reference. The Division Bench has further observed that it would be just and proper to extend the benefit of enhancement rate to all the claimants irrespective of whether any cross objections are filed. In such circumstances, it is difficult to accept the submission made by the learned Assistant Government Pleader that no enhancement should be granted or that the rates fixed by the Division Bench in First Appeal No.1011 of 1980 should not be made applicable to the present case. Mrs.Mulekar sought to rely on the judgment in the case of *Banarsi & Ors. v/s. Ram Phal,* **(2003) 9 SCC 606** to submit that the appellant could not be reduced to a position worse than it had not appealed. In my view, this judgment will have no application to the facts in the present case as in First Appeal No.1011 of 1980, the Division Bench of this court has already held that the claimants covered by the single reference, being Arbitration case No.1 of 70, would be entitled to enhanced rates as fixed by the Division Bench subject to the condition of payment of Court fees as per the Bombay Court Fees Act.

10. First Appeal is, therefore, dismissed. The award passed by the trial Court is set aside and the State Government is directed to pay to the claimants the compensation @ Rs.24,000/- per acre with interest @ 4% per annum from the date of dispossession till the date

of payment, subject to payment of court fees within 12 weeks from today.

. Certified copy of the order expedited.